

NOT FOR PUBLICATION

JUN 28 2006

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM JEFFREY GILLIAM,

Plaintiff - Appellant,

v.

CITY OF SANTA ROSA, California: BOB
SMITH; MIKELL BRYAN; JOAN
COOPER; GENERAL DYNAMICS
CORPORATION; SONOMA COUNTY;
TIMOTHY WERNER; J. PEDERSON,

Defendants - Appellees.

No. 04-15990

D.C. No. CV-02-03382-VRW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, District Judge, Presiding

Submitted June 15, 2006**
San Francisco, California

Before: RYMER and T.G. NELSON, Circuit Judges, and KING,** District Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

*** The Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

William Jefferson Gilliam appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint as time-barred. He also appeals the district court's denial of his motion to disqualify the district judge. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

“We review de novo a district court's dismissal of a plaintiff's claims on statute of limitations grounds.” Cabrera v. City of Huntington Park, 159 F.3d 374, 378 (9th Cir. 1998). “We review the denial of a motion for disqualification for abuse of discretion.” United States v. Rogers, 119 F.3d 1377, 1380 (9th Cir. 1997).

It is undisputed that Gilliam's complaint was filed more than a year after his arrest. Gilliam contends that his § 1983 causes of action did not accrue until his bail was exonerated. The accrual rule derived from Heck v. Humphrey, 512 U.S. 477, 487 (1994) and Harvey v. Waldron, 210 F.3d 1008, 1013-14 (9th Cir. 2000) does not apply because there was no “pending criminal prosecution” against Gilliam after June 28, 2001, when Gilliam was “discharged” and “no complaint was filed” against him. A “booking charge” does not constitute a “pending charge” for purposes of tolling. See Torres v. City of Santa Ana, 108 F.3d 224, 227 (9th Cir. 1997) (concluding, for purposes of tolling under Cal. Gov't Code § 945.3, that no charge is “pending” until a criminal complaint is actually filed

after an arrest); Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1997) (“In California, the statute of limitations for section 1983 actions is tolled by Cal. Gov’t Code § 945.3 while criminal charges are pending.”). Non-exoneration of bail does not mean a corresponding criminal proceeding is pending. The Superior Court's 15-day delay of Gilliam’s exoneration of bail does not constitute a delay of dismissal. See Cal. Penal Code § 1303 (stating that bail exoneration automatically extends 15 days from dismissal).

The district court properly dismissed Gilliam’s claim that the County engaged in a section 1985 conspiracy. Gilliam failed to allege sufficient specific facts to support his claim. See, e.g., Karim-Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 626 (9th Cir.1988).

Gilliam also argues that the conspiracy was a “continuing violation” in that he alleged incidents from 2002. His argument fails because, even assuming the 2002 allegations are true, they are not sufficiently related to the prior June 13, 2001, arrest to be part of a “continuing” constitutional violation. See RK Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1061 (9th Cir. 2002).

The district court’s denial of Gilliam’s motion to recuse was not an abuse of discretion. Cooper’s letters are not reason for disqualification. See United States v. Winston, 613 F.2d 221, 223 (9th Cir. 1980). Moreover, the district court

correctly denied the recusal request because it was late, having been filed after the court's adverse rulings. See E. & J. Gallo Winery v. Gallo Cattle Co., 967 F.2d 1280, 1295 (9th Cir. 1992); Preston v. United States, 923 F.2d 731, 733 (9th Cir. 1991).

AFFIRMED.